

01-2001 0199

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:	)	AGREEMENT FOR RECOVERY
	)	OF PAST RESPONSE COSTS
Boro Wood Products Site	)	
Bennettsville, Marlboro County, SC	)	
	)	U.S. EPA Region 4
	)	CERCLA Docket No. 01-26-C
	)	
SETTLING PARTY	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
Southeastern Modular Homes, Inc.	)	42 U.S.C. § 9622(h)(1)

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**I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 6922(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (September 13, 1987) and redelegated to the Director of the Waste Management Division by EPA Delegation No. 8-14-C (January 5, 1989) and further redelegated to the Chief of the Program Services Branch (March 1990).

2. This Agreement is made and entered into by EPA and Southeastern Modular Homes, Inc., ("Settling Party"). Settling Party consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

**II. BACKGROUND**

3. This Agreement concerns the Boro Wood Products Superfund Site ("Site") located in Bennettsville, Marlboro County, South Carolina. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. In performing this response action, EPA incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred at or in connection with the Site. The Regional Administrator of EPA Region 4, or his/her delegatee, has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

7. EPA and Settling Party desire to resolve Settling Party's alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

8. This Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Settling Party certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

9. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Settling Party.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States paid in connection with the Site through March 21, 2001.

i. "Section" shall mean a portion of this Agreement identified by a roman numeral.

j. "Settling Party" shall mean Southeastern Modular Homes, Inc.

k. "Site" shall mean the Boro Wood Products Superfund site, located at 201 Maple Street, Bennettsville, Marlboro County, South Carolina.

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

**V. REIMBURSEMENT OF RESPONSE COSTS**

*JAS*  
*AD*  
*7/27/00*

10. Within 10 days of the effective date of this Agreement, the Settling Party shall pay to the EPA Hazardous Substance Superfund \$25,000.00 in reimbursement of Past Response Costs. Payment of \$2,000.00 by check # 1225 on 7-27-00 is acknowledged, and \$23,000.00 balance to be paid at time of execution of agreement.

11. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number A4L2 and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Region 4  
Superfund Accounting  
P.O. Box 100142  
Atlanta, Georgia 30384  
Attn: Collection Office for Superfund

12. At the time of payment, Settling Party shall send notice that such payment has been made to:

Ms. Paula Batchelor  
U.S. Environmental Protection Agency  
Program Services Branch  
Waste Management Division  
Cost Recovery Section, 11<sup>th</sup> Floor

61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

## **VI. FAILURE TO COMPLY WITH AGREEMENT**

13. In the event that any payment required by Paragraph 10 is not made when due, Interest to accrue from the effective date of this agreement through the date of payment.

14. If any amounts due to EPA under Paragraph 10 are not paid by the required date, Settling Party shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$1000.00 per violation per day that such payment is late.

15. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 11 and 12.

16. Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due, or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

17. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with any term or condition of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

## **VII. COVENANT NOT TO SUE BY EPA**

19. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Reimbursement of Response Costs) and Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of their obligations under this Agreement. This covenant not to sue extends only to Settling Party and does not extend to any other person.

### **VIII. RESERVATIONS OF RIGHTS BY EPA**

20. The covenant not to sue by EPA set forth in Paragraph 19 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

### **IX. COVENANT NOT TO SUE BY SETTLING PARTY**

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

24. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. EPA and Settling Party each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

25. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

26. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

27. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

28. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 19.

## **XI. RETENTION OF RECORDS**

29. Until 6 years after the effective date of this Agreement, Settling Party shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Settling Party shall deliver any such records or documents to EPA. Settling Party may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records and documents that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

31. By signing this Agreement, Settling Party certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Party regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

## **XII. NOTICES AND SUBMISSIONS**

32. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

As to EPA:

Janet Magnuson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
13<sup>th</sup> Floor  
61 Forsyth Street  
Atlanta, GA 30303

and

Billy D. Bright  
Environmental Scientist  
U.S. Environmental Protection Agency, Region 4  
CERCLA Enforcement Section  
61 Forsyth Street  
Atlanta, Georgia 30303

As to Settling Party:

Douglas Jennings  
Jennings & Harris  
Attorneys at Law  
151 Broad Street  
Post Office Drawer 995  
Bennettsville, South Carolina  
29512-0995

## **XIII. INTEGRATION**

33. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

**XIV. PUBLIC COMMENT**

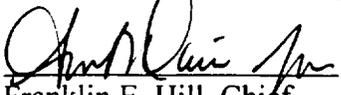
34. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

**XV. EFFECTIVE DATE**

35. The effective date of this Agreement shall be the date upon which EPA issues written notice using certified mail to Settling Party that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:   
Franklin E. Hill, Chief  
Program Services Branch  
Region 4

4/2/01  
Date

Southeastern Modular Homes, Inc., Settling Party to this Agreement, hereby consents to and agrees to the terms of the Agreement.

FOR SETTLING PARTY: South Eastern Modular Homes Inc

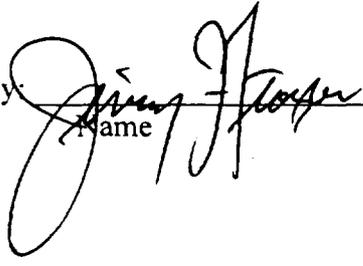
Name

231 E Main St

Address

Bennettsville, SC 29512

By



Name

3-26-01

Date